WP(C) 4792/2006
BEFORE
THE HON'BLE MR JUSTICE B K SHARMA

Heard Mr. K.P. Das, learned Sr. counsel assisted by Mr. H. Das, learned counsel for the petitioner as well as Ms. R. Chokraborty, learned State counsel representing the respondents.

This writ petition has been filed in respect of the resolution adopted by the members of the Gaon Panchayat towards removing the petitioner as the President of the particular Gaon Panchayat. The petitioner has also challenged the consequential order passed by the Chief Executive Officer accepting the resolution so adopted and allowing the Vice President of the Gaon Panchayat to perform the functions and duties of the President as per the provision of the Assam Panchayat Act, 1994.

The petitioner was elected as the President of the Gaon Panchayat, called Khutabari Gaon Panchayat. While he was functioning as such, five members of the Gaon Panchayat expressed their no-confidence against him and accordingly a special meeting for discussing the no-confidence motion was held on 27.06.06 in which the impugned resolution towards removing the petitioner as the President of the Gaon Panchayat was passed. After such resolution adopted by the majority of the members of the Gaon Panchayat, the Chief Executive Officer, Zilla Parishad, Goalpara passed the order dated 04.09.06 accepting the resolution. By the same very order, the Vice President of the Gaon Panchayat has been allowed to discharge the function and duty of the President as envisaged U/s. 2 (d) of the Assam Panchayat Act, 1994.

The whole basis of the challenge made to the impugned resolution and the order is that by Annexure- E letter dated 29.06.06, four Gaon Panchayat members intimated the Chief Executive Officer that the resolution adopted by the Gaon Panchayat towards removal of the petitioner as the president was unwanted same being under duress and compulsion. According to the said letter out of four signatories (Members) two were not present in the meeting in which the no-confidence against the petitioner was discussed.

The aforesaid letter was purportedly written by the four Gaon Panchayat members to the Chief Executive Officer on 29.06.06, i.e. after the impugned resolution was adopted on 27.06.06. Learned State counsel has produced the records and in the records no such letter dated 29.06.06 is available. She was requested to obtain instruction in this regard which she has since obtained. She was furnished with necessary information by the Chief Executive Officer by his letter dated 09.01.07. The letter has been written in reference to the letter dated 03.01.07 addressed to him by the State counsel enclosing therewith Annexure-E letter dated 29.06.06 (copy) and asking as to whether any such letter was addressed to him by the four members as has been alleged by the petitioner. In the letter dated 09.01.07 addressed to the learned State counsel, it has been stated that the four members on being apprised of and shown the Annexure-E letter dated 29.06.06, they have stated that they did not sign in the letter dated 29.06.06 and that the signatures were obtained by the petitioner on blank paper stating that same might be necessary for submission of some prayer concerning the Gaon Panchayat and the Assembly elections to their party High Command in Delhi. As per information furnished by the Chief Election Officer, such signatures were obtained in the blank papers before the last Assembly Election and at the time when the petitioner left for Delhi.

Mr. K.P. Das, learned Sr. counsel for the petitioner specifying the plea of the petitioner that Annexure- E letter dated 29.06.06 addressed to the Chief Executive Officer by the four signatories (member) have not been denied by said members by filing any counter affidavit, such plea is to be accepted. On the other hand, Ms. R. Chokraborty, learned State counsel submits that had it been two state of affairs in respect of the Annexure-E letter dated 29.06.06, the said respondents would have responded to the writ petition and their silence cannot be said to be acceptance of the plea of the petitioner. She further submits that upon verification of the matter relating to authenticity or otherwise of the

Annexure-E letter dated 29.06.06, it has been certified by the Chief Executive Officer that the signatories (members) were never obtained in the letter containing the statements. According to her the contents of the letter dated 29.06.06 was never made known to the signatories thereof. She further submits that since the term of the Gaon Panchayat itself going to expire on 31.03.07, no useful purpose would be served by issuing any direction in favour of the petitioner.

I have given my anxious consideration to the submission made by the learned counsel for the parties as well as the materials on record. The impugned resolution was adopted on 27.06.06 ad the same was approved by the impugned order dated 04.09.06. It is the normal procedure that in a meeting adopting the resolution towards removal of the elected President, the resolution is required to be approved by the competent authority. Thus, after adopting the resolution on 27.06.06, it was forwarded to the Chief Executive Officer of the jurisdictional Zila Parishad. If the contention of the petitioner that after the impugned resolution dated 27.06.06, same of the members had intimated the Chief Executive Officer by letter dated 29.06.06 is to be accepted, it is not discernible as to why the petitioner did not take any action in the matter before the impugned resolution was approved by the Chief Executive Officer by his order dated 04.09.06. The relevant file produced by the State counsel also does not contain Annexure-E representation dated 29.06.06. As per the written instruction furnished to the learned State counsel, the signatures of the four signatories were obtained on blank paper by the petitioner before the Assembly Election in the State and when he left for New Delhi. Merely because the said signatories who are party respondents have not responded to the writ petition, it cannot be said that they had signed the Annexure-E letter dated 29.06.06, more particularly when the Chief Executive Officer upon cross verification, has certified that they have never signed in Annexure-E letter dated 29.06.06.

Even otherwise also since the Assembly Election is due within a couple of months, I am of the considered opinion that the interim management which has been made by the impugned order dated 04.09.06 as per the provision of the Act, shall not be disturbed at this stage. However, I hasten to add that it will be open for the petitioner to make appropriate representation before the Chief Executive Officer if he gets the support of the majority of the members of the Gaon Panchayat.

Subject to the above observations, writ petition stands dismissed.